

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE UNDER 37 C.F.R. §1.8

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/Tina Lafser /
Tina Lafser

March 16, 2010
Date

In re application of: Baum et al.

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) Examiner: Kubelik

Serial No.: 10/563,270

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) Group Art Unit: 1638

Filed: May 2, 2006

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) Conf. No. 4307

For: Insecticidal Proteins Secreted from
Bacillus Thuringiensis and Uses Therefor

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Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

RESPONSE TO REQUEST FOR INFORMATION UNDER 37 CFR 1.105

This paper is filed in response to the Examiner's request for information under 37 CFR 1.105 mailed February 03, 2010, providing a statutory period of two (2) months for response without fee. It is believed that this response is timely filed within two months and therefore no fee is required. However, in the event that the Office deems a fee for any reason required with the submission of this paper, the Office is authorized to deduct the requisite fee from applicants deposit account 13-4125.

The Examiner has indicated that the applicant is claiming a nucleic acid isolated from a strain, and that the instant specification is silent about the source of the strain. The Examiner indicates that the requested information is required to make a meaningful and complete search of the prior art. The Examiner has required answers to the following questions:

First, the Bacillus strain(s) from which SEQ ID NO:5/6 was isolated; and second, whether the Bacillus strain(s) had been disclosed or made publicly available at or before the time of filing of the instant application or any provisional application to which benefit is claimed.

The applicant traverses the requirement for information. It is believed that the request is without merit. First, the applicant is claiming a nucleic acid isolated from a Bacillus species, meaning "any Bacillus thuringiensis or related Bacillus strains from which the new and novel proteins of the present invention are derived" (see page 13 of the international application, first full sentence of the Detailed Description of the Invention). The claim is not directed to any particular species of Bacillus, but to any

species of *Bacillus* which can be identified to harbor the indicated sequence or related sequences such as SEQ ID NO:5/6 claimed in the instant application in response to a restriction requirement, which was also traversed. Thus, the applicant is not claiming a nucleic acid isolated from a strain. Second, it is erroneous to specify in view of the claimed subject matter that the application specification is silent about the source of the strain in a request for information under 37 CFR 1.105 and then request no information about the source of the strain, but to instead request information about the specific strain from which a particular sequence or sequences were isolated and whether the strain had been previously disclosed. It is respectfully believed that the Examiner should be asking about the source of the strain, and then whether the strain had been previously disclosed.

Nevertheless, in answer to the request that the Examiner has made despite the inapplicable preface to the inquiry, the Examiner will find that SEQ ID NO:5 and SEQ ID NO:6 correspond respectively to a gene encoding a TIC1201 insecticidal protein, and the insecticidal protein referred to as TIC1201, referenced throughout the specification along with the other novel and highly related sequences encoding other proteins that are also highly related to TIC1201 and which exhibit substantially similar insecticidal activity as that of TIC1201. TIC1201 is disclosed by the specification to have been derived at least from *Bacillus thuringiensis* strains EG3618 and EG86833 (see international application as filed, page 15 lines 37-39). To the knowledge of the applicant, neither strain has been disclosed previously in any art reference, either designated as EG3618, as EG86833, or under any other designation.

It is believed that this paper is fully responsive and timely filed.

Respectfully submitted,

/ Timothy K. Ball /

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